

CALIFORNIA DEPARTMENT OF JUSTICE

**TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 16. MASTER SETTLEMENT AGREEMENT, TOBACCO
CHAPTER 16.5 FIRE STANDARD COMPLIANT CIGARETTES**

June 1, 2023

FINDING OF EMERGENCY

NOTICE OF PROPOSED EMERGENCY ACTION

Pursuant to the requirements of Government Code section 11346.1, subdivision (a)(1), the Department of Justice (Department) is providing notice of proposed emergency regulation 999.30 of new Chapter 16.5, Division 1, of Title 11 of the California Code of Regulations and emergency revisions to forms JUS-TOB8 and JUS-TOB15 to implement Assembly Bill 1742, which requires the Department administer the California Cigarette Fire Safety and Firefighter Protection Act (“Fire Safety Act”). (Health & Saf. Code, §§ 14950-14959.) Furthermore, the Department is providing notice of proposed emergency amendments to sections 999.10 and 999.12 of Chapter 16, Division 1, of Title 11 of the California Code of Regulations and to Approved Tobacco Escrow Agreement form JUS-TOB6.

SUBMISSION OF COMMENTS

Government Code section 11346.1, subdivision (a)(2) requires that, at least five working days prior to the submission of the proposed emergency action to the Office of Administrative Law (OAL), the Department provide a notice of proposed emergency action (Finding of Emergency and Proposed Text) to every person who has filed a request for notice of regulatory action with the Department. After submission of the proposed emergency regulation to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulation as set forth in Government Code section 11349.6.

The Proposed Text of the emergency regulation and the Finding of Emergency are posted on the Department’s website at <https://oag.ca.gov/tobacco/directory/regulations>.

The Department plans to file the emergency rulemaking package with the OAL at least five working days from the date provided at the top of this notice. If you would like to comment on the Finding of Emergency or the Proposed Text, those comments must be made in writing only, must contain a notation that identifies the emergency regulation to which they relate, and must be received by both the Department and the OAL within five days of the Department’s filing with the OAL. The Department may respond to comments at its discretion.

Send comments simultaneously to:

Department of Justice
Barry Alves
Department of Justice
Tobacco Unit

1300 I Street Sacramento, Suite 125
Sacramento, CA 95814
regulations@doj.ca.gov

and

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

EXPRESS STATEMENT OF EMERGENCY

The Legislature determined the Department may adopt emergency Fire Safety Act (Health & Saf. Code, §§ 14950-14959) regulations and such regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, and safety, or general welfare. (Health & Saf. Code, § 14954, subd. (e).)

The Legislature has also determined the Department may adopt emergency regulations to implement the California tobacco directory and such regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, and safety, or general welfare. (Rev. & Tax. Code, § 30165.1, subd. (n).)

DOCUMENTS RELIED ON

State Fire Marshal's Application for Certification form.

AUTHORITY AND REFERENCE CITATIONS

Authority: Section 30165.1, Revenue and Taxation Code; Sections 14950 through 14959 and 104555 through 104557, Health and Safety Code.

Reference: Section 30165.1, Revenue and Taxation Code; Sections 14950 through 14959 and 104555 through 104557, Health and Safety Code. Section 22979, Business and Professions Code

INFORMATION DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

A. Fire Safety Act

The Fire Safety Act (Health & Saf. Code, §§ 14950-14959) governs the ignition propensity of cigarettes sold in California. Fire Standard Compliant ("FSC") cigarettes are engineered to go out when not being actively smoked. Conversely, non-FSC cigarettes may stay lit when not in active use and thus present a serious fire risk. Since 2007, cigarettes cannot be sold in California unless the manufacturer can certify that their cigarettes are designed, produced, and tested to meet a nationwide performance standard regarding their propensity to burn while not being

actively smoked and marked to show compliance with those safety requirements. (Health & Saf. Code, §§ 14950-14959.) There is no federal law regarding the ignition propensity of cigarettes. Instead, this nationwide safety measure is maintained by each state having passed and continuing to administer a FSC program that is substantially the same as California's. In 2018, California amended the Fire Safety Act to make all non-FSC cigarettes contraband per se. (Health & Saf. Code, § 14957.)

In 2022, Assembly Bill 1742 modified the Fire Safety Act to transition the administration of the State's FSC cigarette program from the State Fire Marshal to the Department effective January 1, 2023. (Health & Saf. Code, §§ 14951(d), 14953.) Moreover, Assembly Bill 1742 makes Fire Safety Act compliance a requirement for cigarettes to be eligible for listing on the California tobacco directory administered and maintained by the Department. It is unlawful for Cigarettes to be sold, offered for sale, or possessed for sale in California if they are not listed on the Department's tobacco directory. (Rev. & Tax Code, § 30165.1, subd. (e).) Cigarette manufacturers currently listed on the tobacco directory must file annual certifications to remain on the Department's tobacco directory. (Rev. & Tax. Code, § 30165.1, subd. (c)(3).)

To administer the Fire Safety Act, the Department requires emergency regulations and forms for processing Fire Safety Act certifications.

B. Tobacco Escrow Agreement

In 1998, 46 states entered into a Tobacco Master Settlement Agreement ("MSA") with the largest tobacco manufacturing companies in the United States to settle certain claims against manufacturers arising out of the sale, advertising, and consumption of certain tobacco products. (Health & Saf. Code, § 104555, subd. (e).) Tobacco manufacturers that elect not to join the MSA are Non-Participating Manufacturers ("NPMs").

NPMs must deposit funds into qualified escrow funds governed by state law based upon their sales of cigarettes and roll-your-own tobacco ("RYO") in California. Unless specific conditions are satisfied, NPMs are statutorily prohibited from accessing or using the principal on deposit in the tobacco escrow accounts for twenty-five years. (Health & Saf. Code, § 104557, subd. (b).) NPMs and their escrow banks must execute a Department approved escrow agreement and ensure the funds are held and monitored in compliance with California law. (Rev. & Tax. Code, § 30165.1, subd. (c)(2)(a).) The Department is responsible for establishing and updating California's tobacco escrow agreement. (Rev. & Tax. Code, § 30165.1, subs. (b)(3)(D), (c)(2)(A), and (o).)

In 2019, the Department amended California Code of Regulations, Chapter 16, section 999.12 and the Approved Tobacco Escrow Agreement, JUS-TOB6 (Rev. 5/2019), which is incorporated by reference into section 999.12. In 2019, the Department sought to clarify that the aggregate Face Value (as defined by section 2.G of the Approved Tobacco Escrow Agreement) of the Permitted Investments (as defined by section 2.O) and the aggregate Cost Basis (as defined by section 2.D) of the Permitted Investments in an NPM's California Subaccount must be equal to or greater than the Minimum Qualified Escrow Principal On-Deposit (as defined by section 2.K). Generally, this means that the aggregate Cost Basis (also known as the purchase value) and Face

Value (also known as maturity value) of the Permitted Investments shall not be lower than the Minimum Qualified Escrow Principal On-Deposit. Section 4.C of the Approved Tobacco Escrow Agreement states the applicable requirement. (Approved Tobacco Escrow Agreement, section 4.C.)

Consistent with the 2019 standard above, the first sentence of the Section 4.D should state:

Whenever the aggregate Face Value of the QEF Sub-Account or the aggregate Cost Basis of the QEF Sub-Account is less than the Minimum QEF Principal On-Deposit for a QEF Sub-Account, the Escrow Agent shall deem the QEF Sub-Account non-compliant.

The Department confirms the 2019 guidance to NPMs and escrow agents by revising the first sentence of section 4.D with the text above.

Based upon the change above, California Code of Regulations, Chapter 16, sections 999.10(b)(17) and 999.12(a) will be updated to reflect that the revision date of the Approved Tobacco Escrow Agreement, JUS-TOB6 has changed from 2019 to 2023.

Effect of the Proposed Rulemaking:

The rulemaking will implement the Legislature's requirement that administration of the Fire Safety Act program move from the State Fire Marshal to the Department. Section 999.30 will be the Department's Fire Safety Act regulation. The amended JUS-TOB15 form will be the Department's primary Fire Safety Act form and the JUS-TOB8 form will be amended to gather supplemental product data required by the Fire Safety Act electronically to reduce processing time and promote efficiency.

Section 4.D of the Approved Tobacco Escrow Agreement will be amended to make a technical change. Sections 999.10 and 999.12 will be revised to reflect the updated effective date of the Approved Tobacco Escrow Agreement.

Anticipated Benefits of the Proposed Regulations:

The Fire Safety Act limits the ignition propensity of cigarettes to avoid serious harm to the public, health and safety, and general welfare caused by fires. To promote efficiency for California, the State transitioned administration of the Fire Safety Act program to the Department. Until 2023, manufacturers sent their Fire Safety Act submissions to both the State Fire Marshal and the Department.

Now only one State agency will receive and process Fire Safety Act certifications. The Department will also use electronic processing to further promote efficiency and reduce costs. While tobacco manufacturers will have some limited costs associated with reviewing the Department's forms and the costs associated with populating their first JUS-TOB8 Brand list with their last FSC test and certifications dates, the Department anticipates that tobacco

manufacturers will ultimately reduce costs by submitting both Fire Safety Act and tobacco directory compliance to only one California agency.

The Health and Safety Code requires NPMs to deposit tobacco escrow on their Units Sold of cigarettes in California as a source of recovery for potential litigation regarding the health impacts or marketing of the cigarettes. (Health & Saf. Code, § 104557.) California law requires the tobacco escrow be governed by an escrow agreement approved by the Department. (Rev. & Tax. Code, § 30165.1, subd. (b)(3)(B)(2) and (c)(2)(A).) This rulemaking process clarifies the fund balance rules for tobacco escrow with a technical change to the Approved Tobacco Escrow Agreement.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to the proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the ignition propensity of cigarettes or the accounting rules that NPMs and escrow banks shall follow regarding the tobacco escrow on deposit for the benefit of California.

Forms Incorporated by Reference:

Form number JUS-TOB6 titled APPROVED TOBACCO ESCROW AGREEMENT was revised in February 2023 and is referenced in sections 999.10, 999.12, and 999.16.

Form number JUS-TOB8 titled BRAND LIST was revised in February 2023 and is referenced in sections 999.10, 999.16, and 999.30, and in JUS-TOB15, the FIRE STANDARD COMPLIANT (“FSC”) CERTIFICATION.

Form number JUS-TOB15 was created in February 2023, is titled FIRE STANDARD COMPLIANT (“FSC”) CERTIFICATION, and is referenced in section 999.30.

Other Statutory Requirements: None.

PURPOSE AND NECESSITY OF EACH PROVISION

A. Fire Safety Act

Chapter 16.5

Section 999.30

Subdivision (a)

In subdivision (a) of section 999.30, the Department seeks to adopt six definitions.

Subdivision (a)(1) and (2)

Subdivision (a)(1) and (a)(2) define FSC Cigarette and FSC Manufacturer to distinguish those terms from Cigarette in existing regulation section 999.10(b)(6) and from NPM or PM in existing regulation section 999.10(b)(28) and (b)(31). Under the Fire Safety Act, cigarette manufacturers shall certify Fire Safety Act compliance to the Department. (Health & Saf. Code, § 14957.) Since 2004, Cigarette manufacturers have certified California tobacco directory compliance to the Department. Currently, all of Department's tobacco regulations concern California tobacco directory compliance and include definitions for the terms cigarettes and manufacturers based upon the scope and purpose of the tobacco directory. The Fire Safety Act and cigarette directory law have different statutory definitions for both cigarettes and manufacturers. For example, roll-your-own tobacco ("RYO") is not a cigarette under the Fire Safety Act. (Health & Saf. Code, § 14950, subd. (b)(1).) Conversely, RYO is a cigarette under the California tobacco directory law. (Health & Saf. Code, §§ 104556, subd. (d), 14950, subd. (b)(1); Rev. & Tax Code, § 30165.1, subd. (a)(4).) Similarly, the definitions of "manufacturer" under the Fire Safety Act and "Tobacco product manufacturer" under the tobacco directory are not identical. (Health & Saf. Code, §§ 104556, subd. (i), 14950, subd. (b)(4); (Rev. & Tax Code, § 30165.1, subd. (a)(11).)

Subdivision (a)(3)-(6)

The Fire Safety Act concerns the testing, marking and certification of cigarettes by manufacturers regarding the ignition propensity of the cigarettes. As such, the remaining definitions are the FSC Marking and FSC Testing definitions from the Fire Safety Act and the designation of the Department's JUS-TOB8 form and the JUS-TOB15 form as the Department's primary Fire Safety Act certification form in subdivisions (a)(3)-(6) of section 999.30. These definitions were necessary to provide clarity regarding the information required by the JUS-TOB8 and JUS-TOB15 forms.

Subdivision (b)

In subdivision (b)(1), the Department explains that forms JUS-TOB8 and JUS-TOB15 are both used for Fire Safety Act certifications. Fire Safety Act certifications expire on three-year cycles and may be submitted separately from directory submissions to the Department. In contrast, California tobacco directory certifications are submitted and expire annually. (Rev. & Tax Code, § 30165.1, subs. (b), (c)(4).) Therefore, the Department is adopting the new JUS-TOB15 form to accept and process the FSC Act certifications. As further explained below, the new JUS-TOB15 form requires applicants to identify themselves, provide contact information, disclose their Fire Safety Act testing method, confirm their California tobacco directory status, and provide their Fire Safety Act testing and marking certifications as required by the Fire Safety Act.

To the extent practical, the Department already collects certain cigarette information such as brand name, brand style, and manufacturer electronically using the Department's JUS-TOB8 form. The Fire Safety Act requires cigarette manufacturers to certify the flavor, filter type, pack type, and length and circumference of their cigarettes to the Department under the Fire Safety Act to the Department. (Health & Saf. Code, § 14953, subd. (b).) This Fire Safety Act data can and should be gathered electronically to maximize efficiency and reduce departmental processing time. Therefore, the Department is revising form JUS-TOB8 form to collect information the Department is expressly authorized to receive under the Fire Safety Act in columns P through T. Cigarette manufacturers track whether and when they last certified and tested their cigarettes under the Fire Safety Act, and the Department will now gather this information in columns U and V of form JUS-TOB8 in order to contemporaneously assess compliance with both the Fire Safety Act and California tobacco directory.

Subdivisions (b)(2) and (b)(3) discuss the required information that must be submitted on the forms and require manufacturers to disclose off-directory Fire Safety Act certifications to the Department on the JUS-TOB8 and JUS-TOB15 forms. As of 2023, cigarette manufacturers must submit both Fire Safety Act and tobacco directory certifications to the Department. Manufacturers may certify Fire Safety Act compliance independently from tobacco directory compliance. But cigarettes cannot be listed on the California tobacco directory if they are not also Fire Safety Act compliant. (Rev. & Tax Code, § 30165.1, subd. (c)(3).)

In subdivision (b)(4), the Department explains how manufacturers may submit their Fire Safety Act certifications to the Department. The Department will accept Fire Safety Act certifications by both mail and email. The Department chose mail and email submission methods because they are both common methods that the manufacturers use already to submit documents to the Department and both methods have minimal fiscal impact on the Department and manufacturers since both methods are routine and standard processes.

The Department's proposed JUS-TOB 15 requires applicants to certify compliance with the record retention requirements in Health and Safety Code section 14952, subdivision (f). Subdivision (b)(5) explains the record retention requirements of the Fire Safety Act and the Department's ability to obtain the records to ensure compliance with the requirement in Health and Safety Code section 14952, subdivision (b) that no more than 25 percent of the cigarettes tested exhibit full-length burns.

Subdivision (c)

In subdivision (c), the Department explains when Fire Safety Act certifications are due.

Subdivision (c)(1) explains cigarettes may not be sold, offered for sale, or possessed for sale unless the manufacturer complies with the Fire Safety Act. (Health & Saf. Code, § 14951.)

Subdivision (c)(2) confirms that Fire Safety Act certifications expire after three years under the Fire Safety Act. (Health & Saf. Code, § 14953, subd. (c).)

The Fire Safety Act does not expressly state how often cigarettes must be retested under the Fire Safety Act. (Health & Saf. Code, § 14953.) All 50 states share a model law governing the ignition propensity of cigarettes substantially similar to the Fire Safety Act. Those laws also require testing as well as recertification every three years, but they do not expressly define the testing interval. Most states interpret their similar Fire Safety Act laws as requiring new FSC test results every three or four years. (See. E.g., AZ ST § 37-1403, subd. (c); CT ST § 29-418, IL ST CH 425 § 8/30, subd. (c); MD BUS REG § 16-603, subd. (d); NM ST § 57-2B-4, subd. (d); NV ST § 477.194, subd. (4); OH ST § 3739.09; OK ADC § 265:40-1-5; TN ST § 68-102-503.)

Alternatively, some states permit manufacturers to attest that their cigarettes still extinguish at least as well as the last time their ignition propensity was tested. (See. E.g., OR ADC 837-035-0200, subd. (3); MI ADC R 29.462, subd. (3), WI ST 167.35.)

The second method does not require independent laboratories to evaluate the manufacturer's unverified contentions regarding the flammability of previously tested products. One manufacturer objects to the three-year testing cycle on the ground that it shortens the three-year certification cycle of the Fire Safety Act by several months. Thus, in subdivision (c)(3), the Department clarifies that FSC Act tests expire after four years. This regulation ensures that manufacturers eventually retest whether their cigarettes are FSC compliant without shortening the three-year certification cycle of the Fire Safety Act.

Form JUS-TOB8

Currently, the Department uses form JUS-TOB8 to collect cigarette data electronically. The Fire Safety Act requires cigarette manufacturers to certify the flavor, filter type, pack type, and length and circumference of their cigarettes to the Department under the Fire Safety Act to the Department. (Health & Saf. Code, § 14953, subd. (b).) The JUS-TOB8 will be amended to also gather the required Fire Safety Act data electronically. Applicants will provide that information electronically using form JUS-TOB8 to maximize efficiency and reduce departmental processing time. Moreover, the revised JUS-TOB8 will streamline Department's efforts to identify non-FSC cigarettes. (Rev. & Tax Code, § 30165.1, subd. (c)(3).)

Under the Fire Safety Act, manufacturers shall certify the flavor of their cigarette to the Department. (Health & Saf. Code, § 14953, subd. (b)(5).) To allow the manufacturers to submit and certify this required information, in column P, manufacturers will indicate with "Tobacco," "Menthol," or "Other" whether any of the brand styles of cigarettes listed by applicant in column F contain a constituent that imparts a characterizing flavor, with characterizing flavor and constituents having the same meaning as subparts (a)(1) and (a)(2) of Health and Safety Code section 104559.5. "Tobacco" is used to reflect cigarettes that do not impart a characterizing flavor other than tobacco. "Menthol" is used to describe cigarettes with the charactering flavor menthol. "Other" is used to describe cigarettes that impart a characterizing flavor other than tobacco or menthol.

Under the Fire Safety Act, manufacturers shall certify to the Department whether their cigarettes are filtered. (Health & Saf. Code, § 14953, subd. (b)(6).) To allow the manufacturers to submit

and certify this required information, in column Q, manufacturers will indicate with filter or non-filter whether their cigarettes are filtered.

Under the Fire Safety Act, manufacturers shall certify their pack type to the Department. (Health & Saf. Code, § 14953, subd. (b)(7).) To allow the manufacturers to submit and certify this required information, in column R, manufacturers will indicate their pack type with “Hard Pack,” “Soft Pack,” or “Other.”

Under the Fire Safety Act, manufacturers shall certify the length and circumference of their cigarettes. (Health & Saf. Code, § 14953, subds. (b)(3)-(4).) To allow the manufacturers to submit and certify this required information, in columns S and T, manufacturers provide the average length and circumference of their cigarettes in millimeters.

Fire Safety Act certifications expire every three years. (Health & Saf. Code, § 14953, subd. (c).) As such, to allow the manufacturers to submit and certify this required information, in column U, manufacturers will provide the date of their last Fire Safety Act certification to California, or otherwise report RYO or if they never FSC certified a Brand Style to California, to assist the Department's monitoring of compliance under Fire Safety Act and tobacco directory.

Under section (c)(3) of regulation 999.30 of this rulemaking, Fire Safety Act test results expire after four years. As such, to allow the manufacturers to submit and certify this required information, in column V, manufacturers provide the date of their last Fire Safety Act test or otherwise report RYO or if they never FSC Tested a Brand Style to California, to assist the Department's monitoring of compliance under Fire Safety Act and tobacco directory.

Form JUS-TOB15

The Department proposes adopting JUS-TOB 15 as a Fire Safety Act certification form. This form will replace the State Fire Marshal’s Application for Certification form.

Similar to the State Fire Marshal’s form, Part I of JUS-TOB 15 requires the applicant to provide their name, telephone number, email address, and mailing address. This permits the Department to contact applicants, which is necessary because sometimes the Department has questions about the information submitted. The State Fire Marshal’s Application also required this information.

Part II requires the applicant to provide their laboratory’s name, telephone number, email address, and mailing address. The Department can use this information to verify that the manufacturer used a valid laboratory that conducts the required testing methods under the Fire Safety Act. The Fire Safety Act requires the cigarettes be tested with either the ASTM E2187-04 test cited in Fire Safety Act or an alternate test that satisfies the testing requirement of the Fire Safety Act. (Health & Saf. Code, § 14952.) As such, Part II requires applicants to designate whether they are using ASTM E2187-04 or an alternate test. If the applicant selects an alternate test, the applicant shall describe the alternate testing process. This information is necessary for the Department to determine whether the FSC Cigarettes have been tested by valid laboratories, using valid testing methods, to ensure compliance with the Fire Safety Act. The State Fire

Marshal's form had required applicants to include similar information by attaching a copy of the laboratory test results.

Similar to the State Marshal's form, in Part III, the applicants provide the Department the flavor, filter type, pack type, and length and circumference of their cigarettes as expressly required by the Fire Safety Act. (Health & Saf. Code, § 14953, subd. (b).) The Fire Safety Act does not define "flavor." To conform across statutes, the Department's Fire Safety Act uses section 104559.5 of the Health and Safety Code. The Department and manufactures currently use an electronic form, the JUS-TOB8, to submit, sort, and organize cigarette data digitally at the brand style level. The flavor, filter type, pack type, and length and circumference data required by the Fire Safety Act are submitted at the brand style level and can be submitted, processed, and stored digitally. Instead of creating a new Fire Safety Act spreadsheet with largely duplicative fields, the Department is promoting efficiency and reducing processing time by modifying the JUS-TOB8 to incorporate the Fire Safety Act data into existing digital submissions and processing. Thus, in part III, applicants confirm they have populated and attached a JUS-TOB8 to their JUS-TOB15.

In Part IV, applicants shall clarify whether they or their cigarettes are listed on the tobacco directory. The Department processes both tobacco directory and Fire Safety Act certifications, and non-FSC cigarettes are not eligible for listing on the tobacco directory. (Rev. & Tax Code, § 30165.1, subd. (c)(3).) Part IV provides clarity and expedites the processing of both Fire Safety Act and tobacco directory certifications by the Department.

Similar to the State Marshal's form, in Part V, the applicants shall certify compliance with the testing and record keeping requirements of the Fire Safety Act as required by the Fire Safety Act. (Health & Saf. Code, § 14952.) The Department chose to require the manufacturer's authorized agent attest to these requirements in order to emphasize their importance and ensure the manufacturer is aware of these requirements. Part V also requires applicant to certify compliance with the record retention requirements in Health and Safety Code section 14952, subdivision (f). This certification is necessary to ensure compliance with the requirement in Health and Safety Code section 14952, subdivision (b) that no more than 25 percent of the cigarettes tested exhibit full-length burns.

In Part VI, the applicants shall certify compliance with the marking requirements of the Fire Safety Act as required by the Fire Safety Act. (Health & Saf. Code, § 14954.) Part VI requires applicants to clarify whether the markings were already provided to the Department or are instead attached to the certification. This certification helps the Department track the status of the submission and promote efficiencies when it is attached to this form and to avoid duplication where it may have already been provided.

Part VII requires a signature under the penalty of perjury, including a declaration that the information submitted is true, correct, accurate and complete. The necessity for a signature under the penalty of perjury is to impress upon applicants the seriousness and importance of signing the form, to attest to the accuracy and completeness of the information submitted, and to deter misrepresentations and submissions of false information. The State Fire Marshal's form had required a certification that the information submitted is true and accurate.

Similar to the State Fire Marshal Form, Part VII requires the applicant's signature to be notarized. The notary requirement helps the Department confirm that the individual who signed the form is an authorized agent of the manufacturer because the Department can rely on the notary certification that the individual's identity was verified and is who they say they are.

B. Revised Approved Tobacco Escrow Agreement

Section 999.10

Subdivision (b)(17) of Section 999.10 defines form JUS-TOB6 as the Department's Approved Tobacco Escrow Agreement, defines JUS-TOB8 as the Department's Brand List form, and incorporate the forms by reference. Currently, the definitions include older revision dates that would need to be updated to reflect this rulemaking's changes to the forms.

The Department also made non-substantive changes by deleting referenced subdivisions listed in the Note and Reference section authority.

Section 999.12

Section 999.12 incorporates the JUS-TOB6 form by reference. As such, there are four instances where the revision date must be updated from 2019 to 2023 to reflect this rulemaking's changes to the form.

The Department also made non-substantive changes by deleting referenced subdivisions listed in the Note and Reference section authority.

Form JUS-TOB6

The Office of the Attorney General is responsible for establishing and updating California's tobacco escrow agreement. (Rev. & Tax. Code, § 30165.1, subs. (b)(3)(D), (c)(2)(A), and (o).) The Department seeks to clarify operation of the fund balance rules by updating the JUS-TOB6 form.

NPMs must deposit funds into qualified escrow funds governed by the JUS-TOB6. Escrow agents and NPM shall monitor the account balance to ensure the Minimum QEF Principal on Deposit is equal to or higher than the Face Value and Cost Basis of the permitted investments.

The current language needs to be deleted because it states that if one of these situations is not met, then the escrow account is non-compliant. As such, the first sentence of the Section 4.D of the Approved Tobacco Escrow Agreement should state:

Whenever the aggregate Face Value of the QEF Sub-Account or the aggregate Cost Basis of the QEF Sub-Account is less than the Minimum QEF Principal On-Deposit for a QEF Sub-Account, the Escrow Agent shall deem the QEF Sub-Account non-compliant.

The form is updated to ensure the Minimum QEF Principal on Deposit is equal to or higher than the Face Value and Cost Basis of the permitted investments, and that the funds remain available and are not deemed non-compliant.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.